

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 1475 OF 2014

Vijay Dharmraj Ohol

.....Applicant

V/s.

The State of Maharashtra

....Respondent

Mr. Nitin Pradhan a/w Ms. Subhada Khot & Ms. Ameeta Kuttikrishnan for
Applicant

Mr. Arfan Sait APP for the State.

P.S.I. L. N. Sonawane Pimpri Police Station, Pune.

CORAM : SMT. SADHANA S. JADHAV, J.

DATED : JANUARY 6, 2015

PC :

1) Heard. This is an application under section 438 of Code of Criminal Procedure, 1973. Applicant is apprehending his arrest in crime no. 341 of 2014 registered at Pimpri Police Station, Pune for offence punishable under section 420, 467, 468, 471 r/w 34 of Indian Penal Code.

2) It is the case of prosecution that on 23/07/2014, Chief Officer of Seva Vikas Cooperative Bank, main branch lodged a report at the police station alleging therein that on 17/07/2014, Special General Meeting of the Bank was scheduled to consider the expulsion of membership of four persons i.e.

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Haresh Aswani and others on account of bringing disrepute to the society. Meeting was scheduled on 17/07/2014 on 11.00 am. There was Police Bandobast of almost 39 police personnels. At the gate, there was checking of entrants to the said hall. It was noticed that there were 14 female members, who were trying to seek entrance to the hall along with identity cards and Adhar cards. It was revealed that the said identity cards were forged and fabricated and that said women were not members of the said society. The cards were seized instantly.

3) It appears from the papers of investigation, that on 19/07/2014, application was made to the police station, however, no offence was registered. On 23/07/2014, offence was registered against known and unknown female members, who were seeking entrance to the hall on the basis of forged and fabricated identity cards. On 09/11/2014, one Aarti Jamdade was arrested by the police. While in the police custody, she had allegedly disclosed that on 15/07/2014, one person named Vijay with whom she was acquainted had called upon her and had also called some other 13 female members and had given them identity cards and directed them to remain

present at the time of meeting.

4) Learned APP submits that on 10/11/2014, present applicant had approached the Court of Sessions at Pune and filed an application under section 438 of Code of Criminal Procedure, 1973 as he was apprehending arrest in crime no. 341/2014. Learned APP has pointed out that since learned counsel argued that the present applicant is totally unconcerned with the said episode or with the said incident, he had no reason to apprehend arrest for the said offence. It is further submitted that applicant had not approached the Court seeking pre-arrest bail on the ground that he is unconcerned with the episode, but on the ground that recitals of the F.I.R. are against the records and that they are absolutely miser of the truth and lavish with falsehood. Applicant had demonstrated before the Court in the application seeking pre-arrest bail that the F.I.R. smacks of concoction and deliberation and that the complainant had deliberately implicated the member of enemical political group i.e. of Aswani group only as a tactic to gain political uphandedness in the locality. It is specifically stated in the said application that the possibility of false application cannot be ruled out. It is pertinent to note that in fact, the

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name of the applicant does not appear in the F.I.R. and therefore, he could not have challenged the recitals of the F.I.R. on account of false implication.

5) Learned counsel for the applicant submits that in the present application, investigating officer has filed an affidavit. It is stated in para 8 that Aarti Jamdade had disclosed that she met Vijay Ohol near Shankar Temple. According to learned counsel, affidavit has been filed to mislead the Court while considering the application under section 438 of Code of Criminal Procedure, 1973.

6) Perused the records, It is a matter of record that Aarti Jamdade had only disclosed the first name and that in the affidavit it is stated that she had met Vijay Ohol. This Court is of the opinion that it can be an error at the time of drafting an affidavit and therefore, same is being ignored.

7) Reverting back to the facts of the case, it is apparent that the case against the applicants rests upon the statement of the co-accused which is omnibus in nature. There is nothing on record to indicate that investigating

officer had inquired with Aarti Jamdade about specific identity of the person who had given her said identity cards, his profession or any other details. However, applicant had apprehended his arrest on his own. Since the case is at the stage of inquiry, at this stage, conduct of the accused need not necessarily be considered under section 8 of the Indian Evidence Act and the same can be considered at the time of trial. As on today, investigating officer has no material, except the statement of the co-accused to seek custody.

8) Learned APP has placed on record the CDR details which would clearly indicate that Aarti Jamdade has been a close acquaintance of present applicant and that he was in contact with her prior to the incident, on the date of incident as well as on the date when she was arrested. This is a matter, which can be considered at the time of trial.

9) Learned counsel for the applicant submits that he would co-operate with the investigating officer to the best of his capacity.

10) Offences alleged against present applicant are triable by Court of

Magistrate. Investigation is moving at a slow pace and hence, this Court is not inclined to grant custodial interrogation of the accused. Observations made herein above are prima facie in nature and shall not be considered for quashing of F.I.R., discharge application or at the time of trial.

ORDER

- (i) Application is allowed.
- (ii) In the event of arrest, applicant be enlarged on bail on furnishing P. R. bond in the sum of Rs. 25,000/- and one or two sureties in the like amount.
- (iii) Applicant shall report to the investigating officer on four consecutive Sundays, commencing from 11/01/2015, between 10.00 am to 12.00 noon and co-operate with the investigating agency to the best of his capacity.

Application stands disposed of.

(SMT. SADHANA S. JADHAV, J.)